

209 CMR 53.00: DETERMINATION AND DOCUMENTATION OF BORROWER'S INTEREST

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53.01: Authority, Purpose, and Scope

- (1) Authority. 209 CMR 53.00 is issued pursuant to M.G.L. c. 183, § 28C.
- (2) Purpose. A lender is prohibited under M.G.L. c. 183, § 28C from knowingly refinancing a home loan that was consummated within the prior 60 months unless the refinancing is in the borrower's interest. 209 CMR 53.00 is intended to provide such factors, classifications, differentiations or other provisions, or such adjustments and exceptions for classes of transactions necessary to carry out M.G.L. c. 183, § 28C.
- (3) Scope. 209 CMR 53.00 applies to any home loan lender.

53.02: Definitions

For the purposes of 209 CMR 53.00, the following definitions apply:

Commissioner, the commissioner of banks.

Borrower, a natural person who seeks or acquires a home loan for personal, family, or household use. Borrower does not include a Cosigner.

Cosigner,

- (a) A natural person who assumes liability for the obligation of a borrower without receiving goods, services, or money in return for the obligation.
- (b) Cosigner includes any natural person whose signature is requested as a condition to granting a home loan to a borrower. The term does not include a spouse whose signature is required in a home loan transaction to perfect a security interest pursuant to state law.
- (c) A natural person who meets the definition in 209 CMR 53.02: Cosigner, is a cosigner whether or not the person is designated as such on the credit obligation.

Home loan, a loan, other than a reverse mortgage transaction, in which: (i) the borrower is a natural person; (ii) the debt is incurred by the borrower primarily for personal, family or household purposes; and, (iii) the debt is secured by a mortgage on real estate improved with a dwelling designed to be occupied by not more than four families and occupied or to be occupied in whole or in part by the borrower. Home loan does not include a loan with a maturity of less

than one year, if the purpose of the loan is a “bridge” loan connected with the acquisition or construction of a dwelling intended to become the borrower’s principal dwelling.

Lender, any association or corporation chartered by the Commonwealth under the provisions of M.G.L. c. 168, 170, 171, or 172 or by similar authority of any state of the United States other than the Commonwealth; a national banking association, savings and loan association or savings bank which exists by authority of the United States; a credit union organized under the provisions of the Federal Credit Union Act; a mortgage lender licensed under G.L. c. 255E, s. 2; or any other mortgagee.

Obligation, an agreement between a borrower and a lender.

Refinancing, making a home loan, the proceeds of which are used to pay off all or part of an existing home loan. The new home loan may also be used to pay off other debts of the borrower. However, if the proceeds of the new home loan are used to pay off all or part of an existing home loan that was consummated more than sixty (60) months prior to the lender’s receipt of an application for a new home loan as well as to pay off other debts of the borrower incurred within the sixty (60) months prior to the lender’s receipt of the application, the new home loan shall not be held to be a Refinancing subject to the provisions of M.G.L. c. 183, s. 28C and 209 CMR 53.00 et seq.

53.03: Prohibition on Refinancing a Home Loan Unless it is in the Borrower’s Interest

Pursuant to M.G.L. c. 183, § 28C, a lender shall not knowingly refinance a home loan that was consummated within 60 months prior to the lender’s receipt of an application for a new home loan, unless the refinancing is in the borrower’s interest.

53.04: Determining Borrower’s Interest

- (1) A home loan shall be in compliance with 209 CMR 53.03 if it meets any of the following:
 - (a) The new home loan is guaranteed, originated, or funded by the Federal Housing Administration, the Department of Veterans Affairs, or other State or federal housing finance agencies;
 - (b) The annual percentage rate of the new home loan at consummation does not exceed by more than two and one half (2.5) percentage points for closed-end first-lien home loans, or by more than three and one half (3.5) percentage points for closed-end subordinate-lien home loans, the yield on United States Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender;
 - (c) The new home loan is an open-end home loan and the annual percentage rate under the agreement will not exceed at any time the Prime rate index as published in the Wall Street Journal plus a margin of one percentage point; or
 - (d) The borrower is able to recoup the costs of refinancing the home loan within two years, taking into account the costs and fees, and the interest rate on the new home loan is reduced without increasing the amortization period of the new home loan compared to the original amortization term of the old home loan.
- (2) A refinancing which does not meet the provisions of 209 CMR 53.04(1) shall not be presumed to be a violation of 209 CMR 53.03.

(3) A lender making a home loan which is not exempt under 209 CMR 53.04(1) shall not knowingly refinance the home loan unless the lender shall have determined that the refinancing is in the borrower's interest. Factors to be considered by a lender in determining if the refinancing is in the borrower's interest include, but are not limited to the following:

- (a) the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;
- (b) there is a change in the amortization period of the new loan compared to the original amortization term of the old home loan;
- (c) the borrower receives cash in excess of the costs and fees of refinancing;
- (d) the borrower's note rate of interest is reduced;
- (e) there is a change from an adjustable to a fixed rate loan, taking into account costs and fees;
- (f) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction; or
- (g) the time it takes to recoup the costs of refinancing, taking into account the costs and fees.

53.05 Underwriting Standards

In making a home loan in which a determination under 209 CMR 53.04 that the home loan is in the borrower's interest is required, a lender shall use sound underwriting practices which are reasonable in relation to the home loan requested.

53.06: Timing of Determination of Borrower's Interest

A lender shall determine the borrower's interest not later than closing.

53.07: Demonstration and Documentation of Compliance

(1) A lender shall develop policies and procedures to demonstrate compliance with 209 CMR 53.00. Such policies and procedures shall include, at a minimum, a worksheet or other document to be dated at or before closing by the lender indicating how the lender determined that the home loan is in the borrower's interest. Such worksheet or other document shall include, at a minimum:

- (a) if a lender determines that a home loan meets one of the factors in 209 CMR 53.04(1), the lender shall indicate specifically how the home loan fulfills such factor; or
- (b) if a home loan does not meet one of the factors in 209 CMR 53.04(1), a lender shall indicate specifically how the lender determined that the home loan was in the borrower's interest.

A lender may request that a borrower acknowledge receipt of such a worksheet or other documentation; provided, however, a lender shall not shift the burden to the borrower to demonstrate that a home loan is in the borrower's interest; and provided further that a lender shall not require a borrower to sign a waiver of future claims under G.L. c. 183, s. 28C or 209 CMR 53.00.

(2) A lender shall maintain the documentation required under 209 CMR 53.07(1) for a period of three years and shall make such documentation available for inspection by the Commissioner.

(3) A mortgage broker may not make an affirmative determination that a home loan is in the

borrower's interest. Nothing herein shall prohibit a mortgage broker from requesting information from a borrower on behalf of the lender or from transmitting information to the borrower on behalf of the lender.

53.08: Notice of Claims

If a lender must make a determination that a home loan is in the borrower's interest pursuant to 209 CMR 53.04, such lender may require, by contract, that said borrower not more than thirty days prior to the filing of any action instituted by the borrower alleging that the lender violated subsection (a) of section 28C of chapter 183 of the General Laws, mail or deliver to the lender a written demand for relief, identifying the borrower and reasonably describing the violation of said section 28C and the injury suffered.

REGULATORY AUTHORITY

209 CMR 53.00: M.G.L. c. 183, § 28C.